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Nov. 6

Mr. Vincent R. Bellifred
Executive Secretary
Governor's Office
State House

Dear Sir:

You have advised this office that the payment of four thousand dollars (\$4,000) to the New Hampshire State Firemen's Relief Association which is contemplated by R. L. c. 323, ss. 62 and 63 and which is directed by the section last cited to be made in the month of May has not yet been made; you inquire whether the amount stated has lapsed, and if it has not, whether payment may be made at this time. Please be advised that the fund has not lapsed and that in our opinion the amount stated may at this time be paid over to the treasurer of the Association upon order of the Governor.

R. L. c. 323, s. 62 provides that the State Treasurer shall annually set aside from the tax received from insurance companies the sum of four thousand dollars (\$4,000), which sum is to be kept distinct from all other funds and to be known as the Firemen's Relief Fund. Section 63 is quoted in part as follows:

"Such fund, in the month of May after its receipt, shall be paid over, upon order of the governor, to the treasurer of the New Hampshire State Firemen's Association . . ."

The provisions of R. L. c. 22, s. 29, relative to the lapsing of appropriations have no application to the fund in question. The stated intention of the legislature in respect to the fund in question is the segregation of the amount stated from other funds of the State. The amount named is to be "set apart . . . and kept distinct" from other funds. Upon segregation as directed, the action required by the appropriating

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language of section 62 is completed. The monies are then in the "Firemen's Relief Fund". And there is no provision for the lapsing of this fund.

As noted above, R.L. c. 323, s. 63 provides that this fund be paid over to the treasurer of the Association in the month of May. This date was chosen, undoubtedly, so that the sum paid over would actually be composed of the monies paid in as the tax, for, by that month, the tax for the preceding calendar year is paid. R.L. c. 323, s. 37 as amended by Laws 1945, c. 71, s. 2; R.L. c. 323, ss. 58, 60, as inserted by Laws of 1945, c. 71, s. 4. That is, the fund is not to be paid over until the tax-paying insurance companies have paid the tax imposed upon them, since the fund is to be made up of an amount deducted from the tax received; the sequence set up by the statutes just above of report, notice of tax, and payment of the same is calculated to produce the entire tax, "during the month of May". Hence the instruction of section 63, administrative in nature, that the fund be paid over in that month.

The fund obviously should have been paid over during the month of May. The fact that this was not done, through inadvertence or otherwise, does not, however, preclude correction of the error at this time. The purpose of the Legislature in choosing the month of May for payment marks that portion of the statute as directory. A liberal construction of such language to carry out the dominant intent of the Legislature is authorized. Sutherland, Statutory Construction, section 5303. It will be proper, then, upon order of the Governor, to make at this time the payment in question.

Very truly yours,

Warren E. Waters
Assistant Attorney General

WEM:HP